On the other hand the *de facto* officer can not compel the municipality (or the State treasurer) to pay him any salary for the time he has actually filled the office, even where there was no *de jure* officer to claim the compensation. *Garfield Township* v. *Crocker*, 63 Kan. 272, 65 Pac. 273; *Dolliver* v. *Parks*, 136 Mass. 499. But a number of courts have refused to carry the doctrine so far, and have allowed a *de facto* officer to recover where there was no *de jure* claimant. *Elledge* v. *Wharton*, 89 S. C. 113, 71 S. E. 657.

Since, then the *de jure* officer is entitled to the proceeds of his office, even though another performs its duties; and since the *de facto* officer is in general not entitled to the proceeds, either from the municipality or against the rightful incumbent, it would seem that payment to the *de facto* officer is voluntary and in violation of the rights of the *de jure* officer; and the latter should not, by an act to which he is not a party, be compelled to seek redress from a stranger. *Andrews* v. *Portland*, 79 Me. 484, 10 Atl. 458, 10 Am. St. Rep. 280 (and note); *State* v. *Carr*, 129 Ind. 44, 28 N. E. 88, 28 Am. St. Rep. 163, 13 L. R. A. 177.

STATUTES—CONVEYANCES AND INCUMBRANCES.—A statute provided that a married woman should have complete use and control of her separate property, except that she should have no power to convey or incumber her real estate unless joined by her husband. A married woman leased her real estate without a joinder by her husband. *Held*, the lease was neither a conveyance nor an incumbrance within the meaning of the statute. *Spiro* v. *Robertson* (Ind. App.), 106 N. E. 726.

A conveyance of realty is a transfer of the legal title from the owner to another by an appropriate instrument. See *Abendroth* v. *Town of Greenwich*, 29 Conn. 356, 365. At common law a married woman was prohibited from making a conveyance of her real property, and where a statute removes such disability and prescribes a method by which she may dispose of it, the provisions of the statute must be strictly complied with. *Scott* v. *Battle*, 85 N. C. 184, 39 Am. Rep. 694; *Bressler* v. *Kent*, 61 Ill. 426, 14 Am. Rep. 67. Notwithstanding this well settled principle, the majority of the cases under statutes prohibiting the wife from making a conveyance without a joinder by her husband have upheld the validity of a lease, though made without such joinder. *Sullivan* v. *Barry*, 46 N. J. L. (17 Vroom) 1; *Perkins* v. *Morse*, 78 Me. 17, 2 Atl. 130, 57 Am. Rep. 780. However, when the point has arisen in other connections the courts have seemingly without hesitation held a lease to be a conveyance. Thus it has been held that where a statute prohibits the husband to act as agent of the wife to convey her real estate, a lease by the husband is within the meaning of the statute. *Sanford* v. *Johnson*, 24 Minn. 172. Likewise where a statute requires conveyances to be acknowledged. *Carlton* v. *Williams*, 77 Cal. 90, 19 Pac. 185, 11 Am. St. Rep. 243. Where a municipal corporation made a lease in a manner different from that prescribed by its charter for making conveyances, the lease was held void. *Shriner* v. *Inhabitants of Town of Phillipsburg*, 58 N. J. L. (29 Vroom) 506, 33 Atl. 852. Many of the statutes under which the question has arisen have given the wife the free use and control of her property as if she were a *feme sole* without

specifically requiring a joinder by the husband in any conveyance of, or incumbrance upon, such property. It is held that a fair construction of a statute of this nature would give the wife power to make a valid lease without a joinder by the husband. *Parent* v. *Callerand*, 64 Ill. 97.

An incumbrance is any right to or interest in the land which may inhere in third persons, to the diminution of the value of the land, but consistent with the passing of the fee by a conveyance. *Fritz* v. *Pusey*, 31 Minn. 368, 18 N. W. 94, 95; *Clarke* v. *Fisher*, 54 Kan. 403, 38 Pac. 493, 495. That a lease is an incumbrance seems the better and majority view. *Grice* v. *Scarborough*, 2 Spear (S. C.) 649; *Fritz* v. *Pusey*, supra; *Clark* v. *Fisher*, *supra*. See *contra*, *Sullivan* v. *Barry*, *supra*. It has been held though that a lease is not such an incumbrance as will avoid an insurance policy containing a stipulation against incumbrances. *Lockwood* v. *Middlesex*, *etc.*, *Co.*, 47 Conn. 553. But in this case the insurer had notice of the lease at the inception of the policy, and the decision seems based to an extent on grounds of estoppel.

A distinction is to be taken between the ordinary lease of real estate, and gas and oil leases. The latter in their primary effect, confer no immediate title or estate, but carry only the right of exploration; any title or estate which may pass remaining inchoate and of no effect until the oil or gas is found. *Heal* v. *Niagara Oil Co.*, 150 Ind. 483, 50 N. E. 482. Such a lease therefore, gives only the right to explore on the premises on the terms agreed upon by the parties, and no property interest therein passes until the oil or gas is reduced to possession, and hence they are generally held to be neither a conveyance of nor an incumbrance upon the wife's property within a statute requiring a joinder by the husband in such cases. *Heal* v. *Niagara Oil Co.*, *supra*; *Kokoma Natural Gas Co.* v. *Matlock*, 177 Ind. 225, 97 N. E. 787, 39 L. R. A. (N. S.) 675.

The modern dislike entertained by the courts for restrictions upon married women in the alienation of their property may furnish the reason for such conflict among the authorities. Their desire to encumber the wife with as few of the common-law disabilities as possible has led the majority of the courts to a liberal and somewhat questionable construction of the married women's statutes. The beneficial results of such statutes, which have as their object the giving to the wife the free use and control of her property, are materially curtailed when she is denied the power to make a valid lease. On the other hand, when the statute specifically denies her the power to convey or incumber her property without a joinder by her husband, a lease by her alone for a great number of years would practically amount to a conveyance and *a fortiori* an incumbrance under a fair construction of the statute. Evidently recognizing such a condition, many States have by statute declared that a lease for less than a certain number of years, usually one or three, shall not be deemed a conveyance. Where such a statute exists the courts with practical unanimity hold by an almost necessary implication that a lease for a greater term is a conveyance. *Crouse* v. *Mitchell*, 130 Mich. 347, 90 N. W. 32.